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EXAMINER	
MEINDICKE DIAZ, SUSANNA M	

ART UNIT	PAPER NUMBER
3692	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/783,322	PETERSON ET AL.	
	Examiner	Art Unit	
	Susanna M. Diaz	3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 May 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,11 and 12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6,11 and 12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This final Office action is responsive to Applicant's amendment filed May 12, 2009.

Claims 1-6 and 11-12 have been amended.

Claims 1-6 and 11-12 are presented for examination.

Response to Arguments

2. Applicant's arguments with respect to claims 1-6 and 11-12 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-6 and 11-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 has been amended to recite a "computer program product, comprising a computer usable medium having a computer readable program code embodied therein, said computer readable program code adapted to be executed to implement a method

of matching a loan consumer with Lenders via the Internet comprising: a) providing a system, wherein the system comprises software modules, and wherein the software modules comprise a logic processing module, a filter module, a database module, and a data display module." The original disclosure does not discuss the details of a computer program product, including the specific modules recited (e.g., a logic processing module, a filter module, a database module, and a data display module).

Independent claim 1 has been amended to recite step "k) repeating steps i and j, after said receiving of the response, so as to query any remaining Lenders matched from said matching step"; however, step h of claim 1 recites that the loan consumer application information is matched to two or more of the lenders in the database based on said searching step, wherein said matching determines which of the two or more lenders has the highest probability of approving the loan. In step l, the loan consumer is presented "only Lenders who responded with an approval and selected from Lenders having the highest probability of approving the loan in order of highest probability." The original disclosure does not rank the lenders based on a probability *per se*. Instead, the original specification discloses a very specific application of a CSI (Customer Satisfaction Index) score that is used to rank lenders:

> [0033] The one to four selected lenders 18 found to match the applicant criteria are prioritized and ranked 244 by the system 12 based on CSI score. In a preferred embodiment, only these one to four lenders 18 are sent an XML data feed of the consumer and credit information, sequentially transmitted with a delay for credit decision. The rank order of lenders 18 is determined by lenders CSI score (CSI score may use the following to derive a numerical equivalence for every lender in 25 point FICO increments: (application decline rate X application approved decision time + customer

> survey score/100)). Application Decline Rate is the rate at which a lender may return a negative credit decision. Application Decision Time is the length of time it may take a lender to return a positive credit decision. Customer Survey Score may be a numerical representation of questions asked to customer concerning customer satisfaction information about a lender.

The CSI score is very specifically defined as the formula: (application decline rate X application approved decision time + customer survey score/100)). The original disclosure clearly ranks lenders based on a CSI score calculated for each lender, which is not a *per se* probability that a lender will approve a loan. Therefore, the currently claimed ranking of the lenders based on a probability *per se* of the lender approving the loan is new matter.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-6 and 11-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites a "computer program product, comprising a computer usable medium having a computer readable program code embodied therein, said computer readable program code adapted to be executed to implement a method of matching a loan consumer with Lenders via the Internet comprising: a) providing a system, wherein the system comprises software modules, and wherein the software modules comprise a logic processing module, a filter module, a database module, and a data display

module." It is not clear what is meant by "adapted to be executed to implement a method..." Does the program code, when executed, cause a computer/machine to perform the recite functionality? The scope of "adapted to be executed to implement" is confusing.

Also unclear is how a computer program product *per se* "provides a system." A system implies structure, but software cannot provide structure, thereby rendering claims 1-6 and 11-12 vague and indefinite.

Independent claim 1 recites step "k) repeating steps i and j, after said receiving of the response, so as to query any remaining Lenders matched from said matching step"; however, step h of claim 1 recites that the loan consumer application information is matched to two or more of the lenders in the database based on said searching step, wherein said matching determines which of the two or more lenders has the highest probability of approving the loan. In step l, the loan consumer is presented "only Lenders who responded with an approval and selected from Lenders having the highest probability of approving the loan in order of highest probability." Step k suggests that multiple lenders are queried; however, it is not clear why it is also determined which of the lenders has the highest probability of approving the loan. Unless there is a tie in a probability likelihood score for multiple lenders, then only one lender would be identified. It is not clear how the identified lender with the highest probability is involved in determining which lender or series of lenders to query. Is only the lender with the highest probability queried? If so, then it's not clear how steps i and j can be repeated.

Alternatively, does the probability of a lender approving a loan affect the order in which a group of lenders is queried?

Appropriate correction is required.

7. Because claims 1-6 and 11-12 are so indefinite, no art rejection is warranted as substantial guesswork would be involved in determining the scope and content of these claims. See In re Steele, 305 F.2d 859, 134 USPQ 292 (CCPA 1962); Ex parte Brummer, 12 USPQ 2d, 1653, 1655 (BdPatApp&Int 1989); and also In re Wilson, 424 F.2d 1382, 165 USPQ 494 (CCPA 1970). Prior art pertinent to the disclosed invention has been made of record and Applicant is reminded they must consider all cited art under Rule 111(c) when amending the claims to conform with 35 U.S.C. § 112.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-6 and 11-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 and 12-13 of copending Application No. 11/648,514. Although the conflicting claims are not identical, they are not patentably distinct from each other because the main difference between the two claim sets is the specification that the filter and loan criteria are internally specified. Claim 11 of Application No. 11/648,514 further defines the internally specified loan criteria as being determined and set by "applying one or more of publicly available information, historical lender loan decisions, and market experience." Sherman (US 2003/0229582) discloses the step of applying an internally specified filter to the application information to determine if the loan consumer meets a set of internally specified loan criteria (¶¶ 25, 26, 50-55, 57, 60), wherein the internally specified loan criteria is determined and set by applying one or more of publicly available information, historical lender loan decisions, and market experience (¶ 57 – Evaluation of credit risk, e.g., based on an applicant's credit report, is indicative at least of market experience); therefore, the Examiner submits that the use of internally specifically loan criteria, such as information associated with credit risk (e.g., market experience) would have been obvious to one of ordinary skill in the art to implement with a loan application processing system at the time of Applicant's invention since it provides an accepted, standard benchmark by which various applications may be fairly assessed. Also, as seen in Sherman, filtering loan applications through predefined lending criteria reduces the "cost

of processing needless applications by the lender" (¶ 32) and requires that an "intermediary need only review one location for available programs of preselected lenders and thereby, decreases the amount of time required to qualify the application in a program compatible with the applicant's financial criteria" (¶ 33).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shutt et al. (US 2006/0126101) -- Paragraph 45 states that "a broker may be able to determine which lenders are most likely or best suited to provide a mortgage to the applicant."

Shutt et al. (US 2003/0217034) -- Paragraph 53 states that "a broker may be able to determine which lenders are most likely or best suited to provide a mortgage to the applicant."

Fowler (US 2007/0299769) – Paragraph 37 states that "in addition to presenting the likelihood of whether the applicant will receive a loan from the lender, lenders can be prioritized or displayed according to the referral fee that will be paid by the lender to the loan originator."

Hillestad et al. (US 2003/0208412) – Discloses a member and lender loan matching system that matches parties based on various filters.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692